

For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

KARIMAH CLARKE,
Appellant/Plaintiff,

v.

RONALDO LOPEZ
Appellee/Defendant.

) **S. Ct. Civ. No. 2019-0074**
) Re: Super Ct. Misc. 018/2019 (STX)
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On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Jessica Gallivan

Submitted: March 10, 2020
Filed: June 17, 2020

Cite as 2020 VI 11

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

APPEARANCES:

Karimah Clarke,
St. Croix, U.S.V.I.
Pro Se.

OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 Appellant Karimah Clarke appeals from the Superior Court’s *sua sponte* dismissal of her “Petition for Sole Authority to Obtain U.S. Passport” for lack of jurisdiction. For the reasons that follow, we reverse and remand for further consideration.

I. BACKGROUND

¶ 2 Appellant, Karimah Clarke, is the mother of eight-year-old J. L. (App. 9.) J. L. has resided on St. Croix with Clarke for his entire life, while J. L.’s natural father, Appellee Ronaldo Lopez,

resides in Baton Rouge, Louisiana. (App. 5.) J. L. has never been the subject of a child custody proceeding in the United States Virgin Islands or any other jurisdiction. (App. 5-7.)

¶ 3 Recently, Clarke began the application process to apply for a U.S. passport for J. L. (APP 6.) Because federal law requires that both parents execute a passport application for minors under the age of sixteen, Clarke prepared J. L.'s application and mailed it to Lopez to execute. (App. 5-6.) Lopez notarized, signed, and returned the application; however, the notarization lacked a notarial stamp or seal. (App. 6.) The U.S. Passport Office subsequently rejected J. L.'s application, citing the lack of a notarial stamp. (App. 6.) Lopez declined to re-execute the application before a notary with a notarial stamp affixed. (App. 7.) In the absence of his cooperation, the U.S. Passport Office suggested that Clarke petition the Superior Court for authority to apply for a U.S. passport on J. L.'s behalf without Lopez's signature.¹ (App. 7.)

¶ 4 On July 31, 2019, Clarke filed such a petition, *pro se*, with the Superior Court, seeking a custodial order granting her sole authority to apply for a passport on J. L.'s behalf. (App. 7.) Notably, Clarke's petition did not seek to alter the existing custody or visitation arrangement between J. L. and Clarke's only request was for the Superior Court to authorize her to apply for J. L.'s passport without Lopez's signature. (App. 5-7.)

¹ The Code of Federal Regulations permits a passport application containing only one parent's signature where the signing parent provides the following:

(E) *An order of a court of competent jurisdiction granting sole legal custody to the applying parent or legal guardian containing no travel restrictions inconsistent with issuance of the passport; or, specifically authorizing the applying parent or legal guardian to obtain a passport for the minor, regardless of custodial arrangements; or specifically authorizing the travel of the minor with the applying parent or legal guardian.*

22 C.F.R. § 51.28(a)(3)(ii)(E) (emphasis added).

¶ 5 On August 19, 2019, the Superior Court dismissed Clarke’s petition for lack of jurisdiction. (J.A. 15.) This appeal timely followed. *See* V.I. R. APP. P. 5(a)(1).

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 6 We have appellate jurisdiction over “all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law.” 4 V.I.C. § 32(a). The Superior Court’s August 19, 2019 dismissal for lack of subject matter jurisdiction disposed of all of the claims that had been submitted to that tribunal for adjudication. Accordingly, it constituted a final order and, therefore, we have jurisdiction over this appeal. *Daley-Jeffers v. Graham*, 69 V.I. 931, 935 (V.I. 2018).

¶ 7 “This Court exercises plenary review over questions relating to the Superior Court’s subject matter jurisdiction.” *Ottley v. Estate of Bell*, 61 V.I. 480, 487 (V.I. 2014) (citing *Brunn v. Dowdye*, 59 V.I. 899, 904 (V.I. 2013)).

B. Sua Sponte Dismissal for Lack of Jurisdiction

¶ 8 Clarke argues that the Superior Court erred when it *sua sponte* dismissed her petition without prior notice or a right to be heard. We agree.

¶ 9 “It is well established that a court may consider the issue of subject matter jurisdiction *sua sponte*.” *Ali v. Hay*, 70 V.I. 737, 740 (V.I. 2019) (quoting *Harvey v. Christopher*, S. Ct. Civ. No. 2007–115, 2009 WL 331304, at *3 (V.I. 2009) (unpublished)). This is because, “[p]rior to considering the merits of a matter before it, a court is obligated to examine whether it has subject matter jurisdiction over the dispute.” *Dowdye*, 59 V.I. at 904 (citing *V.I. Gov’t Hosp. & Health Facilities Corp. v. Gov’t of the V.I.*, 50 V.I. 276, 279 (V.I. 2008)). However, *sua sponte* dismissals are disfavored, and we “ha[ve] generally reversed *sua sponte* dismissals where the

parties have not had an opportunity to be heard.” *Gayanich v. Gayanich*, 69 V.I. 583, 598 (V.I. 2018) (collecting cases); *see also Dowdye*, 59 V.I. at 904 (reasoning that “the Superior Court [is]... required to provide [the litigant] with an opportunity to respond to its concerns about its subject matter jurisdiction”). The failure to provide notice and an opportunity to be heard is especially pertinent in the present case given Clarke’s *pro se* status and the fact that the Superior Court concluded it lacked jurisdiction based on its interpretation of her *pro se* complaint. *Marsh-Monsanto v. Clarenbach*, 66 V.I. 366, 376 (V.I. 2017) (holding that *pro se* litigant’s pleadings are interpreted “with considerable lenience because [they] lack formal legal training” and that “it is [our] policy to give *pro se* litigants greater leeway in dealing with matters of procedure and pleading”) (citations and internal quotation marks omitted). Regardless of the Superior Court’s ability to consider the issue of subject matter jurisdiction *sua sponte*, the court in this case should have ordered Clarke to show cause before dismissing her case. *In re Reynolds*, 60 V.I. 330, 336 (V.I. 2013) (“[A] party must be afforded notice and an opportunity to amend . . . or otherwise respond before trial court may *sua sponte* dismiss a complaint that fails to state a cause of action.” (citing *Martinez-Rivera v. Sanchez Ramos*, 498 F.3d 3, 7 (1st Cir. 2007)) (internal quotation marks omitted). Accordingly, we conclude that the Superior Court abused its discretion when it dismissed Clarke’s petition *sua sponte* without first giving Clarke notice and an opportunity to be heard.

C. Superior Court’s Jurisdiction

¶ 10 Because the Superior Court dismissed the petition *sua sponte* without providing Clarke with notice and an opportunity to be heard is itself grounds for reversing the August 19, 2019 dismissal order, we ordinarily would not need to review the reasoning behind the dismissal. *See Reynolds*, 60 V.I. at 336. However, given the reasoning set forth in the August 19, 2019 order, there is a high probability that “remanding the matter for a new hearing would bring about the

same result and serve no purpose other than additional delay and expense.” Therefore, in the interest of judicial economy we will exercise our discretion in the present circumstances to consider the issue on the merits. *See Harvey v. Christopher*, 55 V.I. 565, 569 n.2 (V.I. 2011); *Malloy v. Reyes*, 61 V.I. 163, 181 (V.I. 2014) (“[A]n appellate court . . . may, in the interests of judicial economy, . . . consider other issues that, while no longer affecting the outcome of the instant appeal, are likely to recur on remand.”).

¶ 11 The Family Division of the Superior Court has been vested with original jurisdiction “to determine the custody or guardianship of the person of any child living within the judicial division, for adoption or other care provision and to determine parental rights in connection with such proceedings.” 4 V.I.C. § 172. Despite this provision, Superior Court held that it lacked subject matter jurisdiction to hear the petition. (App. 15.) Specifically, the Superior Court reasoned that Clarke had not filed a custody petition because she did “not request the Court to determine the custody or guardianship of the minor... or address marriage of the child.” (App. 14-15.) We disagree.

¶ 12 Although the word “custody” is undefined in section 172, the Legislature has instructed that “[w]ords and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language,” but that “[t]echnical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to their peculiar and appropriate meaning.” 1 V.I.C. § 42. In the family law context, “custody” has been defined as “[t]he care, control, and maintenance of a child awarded by a court to a responsible adult,” and “involves legal custody (decision-making authority) and physical custody (caregiving authority).” BLACK’S LAW DICTIONARY 441 (9th ed. 2009). “Legal custody” is then defined as “[t]he authority to make significant decisions on a

child’s behalf.” *Id.* However, “the parents need not have equal decision-making power in a joint legal custody situation”; for instance, “one parent may have decision-making authority regarding certain areas or activities of the child’s life, such as education or healthcare.” *Rivero v. Rivero*, 216 P.3d 213, 221 (Nev. 2009). Moreover, in the event both parents share joint legal custody over a child and disagree on a particular issue, a court may be required to break the impasse. *Id.* at 221-22.

¶ 13 In her petition, Clarke states that Lopez has failed to provide the needed documentation to complete J. L.’s passport application, and she expressly requests that the Superior Court issue an order granting her “the sole authority to apply for and obtain a U.S. Passport for [J. L.]” (App. 7.) Nevertheless, Clarke emphasizes that she “does not seek to deprive [Lopez] of any existing rights of visitation or communications with [J. L.] or of any other parental rights which [Lopez] may have respecting [J. L.]” (App. 7.) In other words, Clarke asks that the Superior Court issue an order granting her the sole legal custody to decide whether to apply for a passport for J. L., without modifying any other aspect of the parties’ physical or legal custody. Thus, the petition requests that the Superior Court “determine the custody” of J. L. See 4 V.I.C. § 172. Accordingly, the Superior Court erred when it dismissed Clarke’s petition for lack of jurisdiction.²

III. CONCLUSION

¶ 14 The Superior Court erred when it dismissed Clarke’s claim for lack of subject matter jurisdiction without giving her an opportunity to be heard on that issue. The Superior Court also erred when it determined that it lacked jurisdiction to hear Clarke’s “Petition for Sole Authority to

² In its August 19, 2019 order, the Superior Court also determined that it lacked jurisdiction over the petition under 4 V.I.C. § 76. Because we conclude that the Superior Court possessed jurisdiction pursuant to section 172, we need not decide whether the court also possessed jurisdiction under § 76.

Obtain U.S. Passport.” Because the Superior Court has subject matter jurisdiction to address the merits of her claim, we reverse the August 19, 2019 dismissal order and remand the case to allow Clarke’s petition to be considered on the merits.

DATED this 17th day of June 2020.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST

VERONICA J. HANDY, ESQ.
Clerk of the Court